

only if, without such regulation, underground sources of drinking water will not be endangered by an underground injection.

(C) Nothing in this section shall be construed to alter or affect the duty to assure that underground sources of drinking water will not be endangered by any underground injection.

(c) Temporary permits; notice and hearing

(1) The Administrator may, upon application of the Governor of a State which authorizes underground injection by means of permits, authorize such State to issue (without regard to subsection (b)(1)(B)(i)) temporary permits for underground injection which may be effective until the, expiration of four years after December 16, 1974, if—

(A) the Administrator finds that the State has demonstrated that it is unable and could not reasonably have been able to process all permit applications within the time available;

(B) the Administrator determines the adverse effect on the environment of such temporary permits is not unwarranted;

(C) such temporary permits will be issued only with respect to injection wells in operation on the date on which such State's permit program approved under this part first takes effect and for which there was inadequate time to process its permit application; and

(D) the Administrator determines the temporary permits require the use of adequate safeguards established by rules adopted by him.

(2) The Administrator may, upon application of the Governor of a State which authorizes underground injection by means of permits, authorize such State to issue (without regard to subsection (b)(1)(B)(i)), but after reasonable notice and hearing, one or more temporary permits each of which is applicable to a particular injection well and to the underground injection of a particular fluid and which may be effective until the expiration of four years after December 16, 1974, if the State finds, on the record of such hearing—

(A) that technology (or other means) to permit safe injection of the fluid in accordance with the applicable underground injection control program is not generally available (taking costs into consideration);

(B) that injection of the fluid would be less harmful to health than the use of other available means of disposing of waste or producing the desired product; and

(C) that available technology or other means have been employed (and will be employed) to reduce the volume and toxicity of the fluid and to minimize the potentially adverse effect of the injection on the public health.

(d) "Underground injection" defined; underground injection endangerment of drinking water sources

For purposes of this part:

(1) UNDERGROUND INJECTION.—The term "underground injection"—

(A) means the subsurface emplacement of fluids by well injection; and

(B) excludes—

(i) the underground injection of natural gas for purposes of storage; and

(ii) the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities.

(2) Underground injection endangers drinking water sources if such injection may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons.

(July 1, 1944, ch. 373, title XIV, §1421, as added Pub. L. 93-523, §2(a), Dec. 16, 1974, 88 Stat. 1674; amended Pub. L. 95-190, §6(b), Nov. 16, 1977, 91 Stat. 1396; Pub. L. 96-502, §§3, 4(c), Dec. 5, 1980, 94 Stat. 2738; Pub. L. 99-339, title II, §201(a), June 19, 1986, 100 Stat. 653; Pub. L. 104-182, title V, §501(b)(1), Aug. 6, 1996, 110 Stat. 1691; Pub. L. 109-58, title III, §322, Aug. 8, 2005, 119 Stat. 694.)

REFERENCES IN TEXT

Section 300j-6(b) of this title, referred to in subsec. (b)(1)(D), was repealed, and a new section 300j-6(b) relating to administrative penalty orders was added, by Pub. L. 104-182, title I, §129(a), Aug. 6, 1996, 110 Stat. 1660.

AMENDMENTS

2005—Subsec. (d)(1). Pub. L. 109-58 inserted heading and amended text of par. (1) generally. Prior to amendment, par. (1) read as follows: "The term 'underground injection' means the subsurface emplacement of fluids by well injection. Such term does not include the underground injection of natural gas for purposes of storage."

1996—Subsec. (b)(3)(B)(i). Pub. L. 104-182 substituted "number of States" for "number or States".

1986—Subsec. (b)(2)(A). Pub. L. 99-339 inserted "or natural gas storage operations" after "production".

1980—Subsec. (b)(1)(A). Pub. L. 96-502, §4(c), substituted "effective on the date on which the applicable underground injection control program takes effect" for "effective three years after December 16, 1974".

Subsec. (d)(1). Pub. L. 96-502, §3, inserted provision that such term does not include the underground injection of natural gas for purposes of storage.

1977—Subsec. (b)(3). Pub. L. 95-190 added par. (3).

§ 300h-1. State primary enforcement responsibility

(a) List of States in need of a control program; amendment of list

Within 180 days after December 16, 1974, the Administrator shall list in the Federal Register each State for which in his judgment a State underground injection control program may be necessary to assure that underground injection will not endanger drinking water sources. Such list may be amended from time to time.

(b) State applications; notice to Administrator of compliance with revised or added requirements; approval or disapproval by Administrator; duration of State primary enforcement responsibility; public hearing

(1)(A) Each State listed under subsection (a) shall within 270 days after the date of promulgation of any regulation under section 300h of this

title (or, if later, within 270 days after such State is first listed under subsection (a)) submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State—

(i) has adopted after reasonable notice and public hearings, and will implement, an underground injection control program which meets the requirements of regulations in effect under section 300h of this title; and

(ii) will keep such records and make such reports with respect to its activities under its underground injection control program as the Administrator may require by regulation.

The Administrator may, for good cause, extend the date for submission of an application by any State under this subparagraph for a period not to exceed an additional 270 days.

(B) Within 270 days of any amendment of a regulation under section 300h of this title revising or adding any requirement respecting State underground injection control programs, each State listed under subsection (a) shall submit (in such form and manner as the Administrator may require) a notice to the Administrator containing a showing satisfactory to him that the State underground injection control program meets the revised or added requirement.

(2) Within ninety days after the State's application under paragraph (1)(A) or notice under paragraph (1)(B) and after reasonable opportunity for presentation of views, the Administrator shall by rule either approve, disapprove, or approve in part and disapprove in part, the State's underground injection control program.

(3) If the Administrator approves the State's program under paragraph (2), the State shall have primary enforcement responsibility for underground water sources until such time as the Administrator determines, by rule, that such State no longer meets the requirements of clause (i) or (ii) of paragraph (1)(A) of this subsection.

(4) Before promulgating any rule under paragraph (2) or (3) of this subsection, the Administrator shall provide opportunity for public hearing respecting such rule.

(c) Program by Administrator for State without primary enforcement responsibility; restrictions

If the Administrator disapproves a State's program (or part thereof) under subsection (b)(2), if the Administrator determines under subsection (b)(3) that a State no longer meets the requirements of clause (i) or (ii) of subsection (b)(1)(A), or if a State fails to submit an application or notice before the date of expiration of the period specified in subsection (b)(1), the Administrator shall by regulation within 90 days after the date of such disapproval, determination, or expiration (as the case may be) prescribe (and may from time to time by regulation revise) a program applicable to such State meeting the requirements of section 300h(b) of this title. Such program may not include requirements which interfere with or impede—

(1) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations, or

(2) any underground injection for the secondary or tertiary recovery of oil or natural gas,

unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection. Such program shall apply in such State to the extent that a program adopted by such State which the Administrator determines meets such requirements is not in effect. Before promulgating any regulation under this section, the Administrator shall provide opportunity for public hearing respecting such regulation.

(d) "Applicable underground injection control program" defined

For purposes of this subchapter, the term "applicable underground injection control program" with respect to a State means the program (or most recent amendment thereof) (1) which has been adopted by the State and which has been approved under subsection (b), or (2) which has been prescribed by the Administrator under subsection (c).

(e) Primary enforcement responsibility by Indian Tribe

An Indian Tribe may assume primary enforcement responsibility for underground injection control under this section consistent with such regulations as the Administrator has prescribed pursuant to this part and section 300j-11 of this title. The area over which such Indian Tribe exercises governmental jurisdiction need not have been listed under subsection (a) of this section, and such Tribe need not submit an application to assume primary enforcement responsibility within the 270-day deadline noted in subsection (b)(1)(A) of this section. Until an Indian Tribe assumes primary enforcement responsibility, the currently applicable underground injection control program shall continue to apply. If an applicable underground injection control program does not exist for an Indian Tribe, the Administrator shall prescribe such a program pursuant to subsection (c) of this section, and consistent with section 300h(b) of this title, within 270 days after June 19, 1986, unless an Indian Tribe first obtains approval to assume primary enforcement responsibility for underground injection control.

(July 1, 1944, ch. 373, title XIV, §1422, as added Pub. L. 93-523, §2(a), Dec. 16, 1974, 88 Stat. 1676; amended Pub. L. 95-190, §6(a), Nov. 16, 1977, 91 Stat. 1396; Pub. L. 99-339, title II, §201(a), title III, §302(c), June 19, 1986, 100 Stat. 653, 666.)

AMENDMENTS

1986—Subsec. (c)(1). Pub. L. 99-339, §201(a), inserted "or natural gas storage operations, or" after "production".

Subsec. (e). Pub. L. 99-339, §302(c), added subsec. (e).

1977—Subsec. (b)(1)(A). Pub. L. 95-190 inserted provisions relating to extension of date for submission of applications by any State.

§ 300h-2. Enforcement of program

(a) Notice to State and violator; issuance of administrative order; civil action

(1) Whenever the Administrator finds during a period during which a State has primary en-